

RULES OF THE
DEPARTMENT OF REVENUE

CHAPTER 810-3-25

Estates and Trusts

TABLE OF CONTENTS

810-3-25-.01	Taxable Income of Estates and Trusts
810-3-25-.02	Estate and Trust Charitable Contributions, (REPEALED, EFFECTIVE MAY 5, 2000)
810-3-25-.03	Estate and Trust Taxable Income, (REPEALED, EFFECTIVE MAY 5, 2000)
810-3-25-.04	Estates and Trusts Tax Computation
810-3-25-.05	Estates and Trusts Beneficiary Taxable Income
810-3-25-.06	Trusts Exempt from Taxation
810-3-25-.07	Estates and Trusts, Miscellaneous Information
810-3-25-.08	Trusts and Estates Net Operating Loss
810-3-25-.09	Reporting of Roth IRA Conversions for Part-Year Residents

810-3-25-.01 Taxable Income of Estates and Trusts.

(1) The tax imposed by Chapter 18, Title 40, Code of Alabama 1975, shall apply to the income of estates or of any kind of property held in trust, including:

(a) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) Income accumulated or held for future distribution under the terms of the will or trust; and,

(d) Income which is to be distributed to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct.

(2) The net income, or taxable income, of an estate or trust is computed in the same manner as that of an individual, with the exception that the deduction for amounts paid or permanently put aside for a charitable purpose shall be allowed to the extent specified in 26 U.S.C. § 642(c). For interpretation of federal statutes adopted by the Alabama legislature, see Rule 810-3-1.1-.01, Operating Rules.

(a) Gross income is computed as provided in § 40-18-14.

(b) Deductions (including net operating loss carrybacks or carryforwards) are allowed as provided in §§ 40-18-15 and 40-18-15.2.

1. Federal estate taxes are an allowable deduction on the fiduciary return of an estate.

(c) Taxable income is reduced by any income properly paid to the beneficiary of the estate of a deceased person which is taxable to the beneficiary.

(d) Taxable income is also reduced by the amount of income identified in paragraph (1)(d), above.

(e) The estate or trust is allowed the same exemption as is allowed a single person under § 40-18-19.

(f) In the case of a trust created by a nonresident or the estate of a nonresident, gross income of such trust or estate includes only amounts which

would be included in the gross income of a nonresident individual as provided in § 40-18-14(4).

Author: Ron Bedsole and Ed Cutter, CPA

Authority: §§40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975

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810-3-25-.04 Estates and Trusts Tax Computation.

(1) Estates and trusts are taxed at the same rate as a single individual - see § 40-18-5(1), Code of Alabama 1975. Those rates are two percent of the first \$500.00 of taxable income, four percent of the taxable income in excess of \$500.00 and not in excess of \$3,000.00, and five percent of taxable income in excess of \$3,000.00.

(2) A resident estate or trust that has gross income taxable in Alabama and another state will be allowed a credit for net income taxes paid the other state on such income as provided in §40-18-21. See Rule 810-3-21-.01.

Authors: Ron Bedsole and Ed Cutter, CPA

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810-3-25-.05 Estates and Trusts Beneficiary Taxable Income.

(1) (a) Each beneficiary of a trust or estate shall include in gross income the distributive share, whether distributed or not, of the net income of the trust or estate; except that portion of the estate or trust net, or taxable, income which was taxed as provided in Rule 810-3-25-.01. Income which would be exempt if received directly by the beneficiary shall be exempt if received through a fiduciary.

(b) Each nonresident beneficiary of an estate or trust shall include in Alabama gross income the distributive share, whether distributed or not, of the net income of the trust or estate which is attributable to Alabama sources; except that portion of such trust or estate income which was taxed as provided in Rule 810-3-25-.01.

(2) The amounts distributed to an individual from those trusts described in Rule 810-3-25-.06 subparagraphs (1)(a), (1)(b), (1)(c), and (1)(d) shall be taxable to the distributee in accordance with 26 U.S.C. § 72 in the year in which distributed as if it were an annuity the consideration for which is the amount contributed by the employee.

(a) The individual's cost basis, "the amount contributed by the employee", shall include:

1. Amounts contributed before January 1, 1982, by an individual and/or his spouse to an individual retirement account, bond, or annuity for which no deduction was allowed under § 40-18-15, Code of Alabama 1975.

2. Amounts contributed before January 1, 1982, by a taxpayer to a trust described in § 40-15-25(e) for which no deduction was allowed under § 40-18-15.

3. Amounts contributed before January 1, 1985 to an annuity plan qualifying under 26 U.S.C. §§ 401(k)(2) and 403(b), for which no deduction was allowed under § 40-18-15.

4. The amount included in prior years income by the individual or the trust due to failure to qualify for exempt status.

5. The amount included in the individual's gross income because of a prior distribution that failed to qualify for the "rollover provision" or was included in gross income pursuant to 26 U.S.C. § 408(m) (acquisition of works of art, etc., treated as a distribution).

(b) The cost of the annuity to the recipient is the amount contributed by him or her, and not previously deducted.

1. For annuities which started before January 1, 1985, annuity proceeds are first considered to be a recovery of contributions to the extent of such contributions before being included in gross income of the recipient.

2. For annuities which started after December 31, 1984, but before January 1, 1986, annuity proceeds will be included in gross income in the ratio of expected return in excess of contributions to total expected return; provided however, that recipients of an employee annuity as defined in 26 U.S.C. 72(d) (as in effect before January 1, 1986) will continue to recover all costs first as provided in subparagraph 1., above.

3. For annuities which started after December 31, 1985, annuity proceeds will be included in gross income in the ratio of expected return in excess of contributions to total expected return in the same manner as described in 26 U.S.C. § 72 (as in effect after December 31, 1985).

(c) 1. Lump sum distributions will be included in gross income in the year received. There is no provision in Alabama law for the forward averaging of such distributions.

2. No part of a distribution may be excluded from gross income as a capital gain.

(d) Alabama law, unlike the provisions of 26 U.S.C. § 72, does not impose an additional tax on certain early distributions from trusts described in § 40-18-25(e).

(3) Recipients of distributions from charitable remainder unitrusts and charitable remainder annuity trusts shall include in gross income the amounts specified in 26 U.S.C. §§ 664 (b) (1) and (2).

(4) Distributions from or rollovers to individual retirement accounts described in 26 U.S.C. §§ 408A and 530, shall be taxed to the distributee according to 26 U.S.C. §§ 408A and 530. See also Rule 810-3-25-.09, Reporting of Roth IRA Conversions for Part-Year Residents.

(5) Distributions from a trust that are not included in gross income of the individual for federal purposes due to the "rollover provisions" of 26 U.S.C. §§ 402, 403, 408, and 409 are excluded from Alabama gross income of the individual. These are:

(a) Qualified stock bonus, pension, or profit sharing plans as described in 26 U.S.C. § 401(a), which are exempt under 26 U.S.C. § 501(a), and meet the rollover requirements of 26 U.S.C. § 402,

(b) Employee annuities which meet the requirements of 26 U.S.C. § 404(a)(2), and the rollover requirements of 26 U.S.C. § 403,

(c) Individual retirement accounts that qualify under and meet the "rollover provisions" of 26 U.S.C. § 408, and

(d) Retirement bonds that qualify under 26 U.S.C. §§ 409 or 219 and meet the "rollover provisions" of 26 U.S.C. § 409.

(6) If an employer makes a contribution to a nonexempt trust for an employee and the contribution is nonforfeitable to the employee, it shall be included in the gross income of the employee at the time of the contribution.

(7) If contributions in the preceding paragraph are not nonforfeitable when made but later become nonforfeitable, their fair market value shall be included in the gross income of the employee when they become nonforfeitable.

(8) The income from a revocable trust is taxable income to the grantor unless the trust is irrevocable as to the income, then the income is taxable to the trust or the beneficiary as directed in § 40-18-25.

(a) A loss on the final return of a revocable trust is allowed to pass on to the grantor unless the trust is irrevocable as to income, then the loss is allowed to pass on to the beneficiary.

(b) A loss on an irrevocable trust cannot be passed on to the grantor or the beneficiary.

(9) See also § 40-18-14 for inclusion of trust or estate distributions in gross income.

(10) For interpretation of federal statutes adopted by the Alabama legislature, see Rule 810-3-1.1-.01, Operating Rules.

Authors: Ron Bedsole and Ed Cutter, CPA

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810-3-25-.06 Trusts Exempt from Taxation.

(1) Except as provided in paragraphs (2), (3) and (4) below, the following trusts are exempt from taxation under § 40-18-25, Code of Alabama 1975:

(a) Any qualified trust defined in 26 U.S.C. § 401(a) relating to qualified pension, profit sharing, or stock bonus plans.

(b) A custodial account, an annuity contract, or a contract issued by an insurance company that qualifies under 26 U.S.C. § 401(f).

(c) An individual retirement account, an individual retirement annuity, or any custodial account that qualifies under 26 U.S.C. § 408(e), 26 U.S.C. § 408A, or 26 U.S.C. § 530.

(d) A retirement bond that qualifies under 26 U.S.C. § 409.

(e) Corporations, as described in 26 U.S.C. § 501(c)(2), organized for the exclusive purpose of holding title to property, collecting income therefrom, and remitting the proceeds, less expenses, to an organization which is exempt under § 40-18-25.

(f) Voluntary employees' beneficiary associations as described in 26 U.S.C. § 501(c)(9).

(g) Local teachers' retirement fund associations as described in 26 U.S.C. § 501(c)(11).

(h) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits as described in 26 U.S.C. § 501(c)(17).

(i) An organization or trust created exclusively to form part of a qualified group legal services plan or plans, as described in 26 U.S.C. § 501(c)(20).

(j) A trust created exclusively to pay liability insurance premiums for, pay administrative and other expenses of, and pay claims for liability for disability or death due to pneumoconiosis (black lung), as described in 26 U.S.C. § 501(c)(21).

(k) A charitable remainder annuity trust or a charitable remainder unitrust, as those terms are defined in 26 U.S.C. § 664, relating to charitable remainder trusts, to the extent provided in 26 U.S.C. § 664.

(1) Corporations and any organization as described in 26 U.S.C. § 501(c)(3).

(2) Feeder organizations, as described by 26 U.S.C. § 502, are not exempt from taxation under § 40-18-25, Code of Alabama 1975.

(3) Organizations not exempt from federal income tax due to the requirements of 26 U.S.C. § 503, relating to requirements for exemption, are not exempt from taxation under § 40-18-25, Code of Alabama 1975.

(4) The unrelated business income of an exempt organization, as defined in 26 U.S.C. § 512, is not exempt from taxation under § 40-18-25, Code of Alabama 1975 . See Reg. 810-3-32-.03.

(5) For interpretation of federal statutes adopted by the Alabama Legislature, see Rule 810-3-1.1-.01, Operating Rules.

Authors: J. Ron Bedsole, Nancy Butler, and Ed Cutter, CPA

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810-3-25-.07 Estates and Trusts, Miscellaneous Information.

(1) Estates and trusts are required to file Alabama Form 41, Fiduciary Income Tax Return, by the 15th day of the fourth month following the close of their calendar or fiscal year.

(2) The fiduciary is required to make and file the return and pay the tax on the taxable income of an estate or trust. If a fiduciary receives income which is to be distributed to a nonresident beneficiary, the fiduciary shall file with his or her return a schedule showing the amount of income distributed to each such beneficiary and the portion thereof which is exempt and the portion which is subject to Alabama tax.

(3) (a) For rules on recognition of gain or loss on transfer of property to or from an estate, trust, or beneficiary, see § 40-18-8, Code of Alabama 1975.

(b) For rules on basis of property transferred to or from an estate, trust or beneficiary, see § 40-18-6.

(4) The Internal Revenue Code contains provisions similar to those of § 40-18-25. Decisions and interpretations of the federal courts and agencies will be given due weight in interpreting this section.

Authors: Ron Bedsole and Ed Cutter, CPA

Authority: §§ 40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975

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810-3-25-.08 Trusts and Estates Net Operating Loss.

(1) A trust or estate may carryover a net operating loss in the same manner as an individual. See Rule 810-3-15-.22.

(a) When a trust or estate has a carryback of a net operating loss that reduces income available for distribution to beneficiaries below the amount that has been distributed, the prior distribution in excess of available income becomes a nontaxable distribution of corpus. If such income was taxed to the beneficiary, an amended Alabama return should be filed.

(b) A trust or estate loss cannot be passed on to the beneficiary except as described in Rule 810-3-25.05(8).

Authors: Ron Bedsole and Ed Cutter, CPA

Authority: §§ 40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975

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810-3-25-.09 Reporting of Roth IRA Conversions for Part-Year Residents.

(1) Taxpayers are allowed to convert an IRA to a Roth IRA in accordance with 26 U.S.C. §408A. Any amount required to be included in gross income as a result of the conversion will be ratably included in gross income over a 4-taxable year period beginning with the taxable year in which the conversion is made.

(2) Part-year residents, reporting in years 1998, 1999, 2000 and 2001, will use the original date of rollover to determine whether the allocated amount will be included as Alabama income.

(a) If an individual becomes an Alabama resident on or before the date of rollover or the anniversary date of the rollover, the allocation for that year will be taxable to Alabama.

(b) If an individual ceases to be an Alabama resident after the date of rollover or the anniversary date of the rollover, the allocation for that year will be taxable to Alabama.

Authors: Nancy Butler, Ronnie Bedsole & Ed Cutter, CPA
Individual and Corporate Tax Division

Authority: Sections 40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975

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